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as that the widespread legends of a virgin birth may be due to prehistoric racial memories of a time when a-sexual generation was the rule. When he gets to the period of medieval and modern institutions—more particularly in England—Mr. Jenks speaks with much more authority, and his account of the gradual development of the present forms of political life and action is the best part of the book; though even here the explanatory conjectures seem occasionally more facile than convincing. Mr. Jenks however is considerably more successful in dealing with the facts in detail, than he is in throwing light on the larger principles of political development; indeed from the standpoint of a philosophy of history the book is perplexing. Especially surprising is the lacuna between the account of the more general features of a patriarchal society and the beginnings of modern Europe; and the consequent absence of any discussion, and almost of any mention, of the Greek and Roman states, to say nothing of the great empires of the East. Indeed the reader is apt to carry away the impression, whether intended or not I find it hard to make sure, not only that the conception of a State, which quite properly is distinguished as one special form of social institution, from the Community or the Nation, is inseparable from that of military headship but that States did not exist until the barbarian overthrow of the Roman Empire. The book concludes with two chapters which lie somewhat outside its general evolutionary plan, one a logical analysis, good so far as it goes, of the various types of state, and the other a brief glance at some of the recent proposals of change in the political field—the idea of a league of nations, proportional representation, and the more prominent tendencies of industrial radicalism. The comments here are judicious enough, though of course little can be done in so narrow a compass except to sketch the nature of the proposed programs. The writer indicates a greater sympathy with the ideal of Guild Socialism than might perhaps have been anticipated from other parts of the volume.

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The Life of John Marshall. Volumes III and IV. By Albert J. Beveridge. Boston, Houghton, Mifflin Co. 1919. Vol. III, pp. x, 644, Vol. IV, pp. xiii, 668.

The first two volumes of Mr. Beveridge's great work brought his hero only to the threshold of his real career; the two volumes before us consequently cover the entire period of Marshall's chief justiceship, and so are of especial interest to lawyers.

The first half of Volume III deals with the Republican assault on the Judiciary, of which Marshall's decision in *Marbury v. Madison* was an episode. In this connection Mr. Beveridge has unearthed a document of capital importance, a letter from the Chief Justice to Justice Chase, written while the latter's trial for impeachment was pending. In it the writer, evidently in great trepidation for the safety of the Court, proposes in effect that Congress give up its powers in relation to impeachment and receive in return the right to review the decisions of the Supreme Court! (See III, pp. 176-177.) It should be noted in passing that this letter is evidently misdated January 23, 1804, instead of 1805.

The second half of Volume III is devoted for the most part to the Burr Conspiracy and Burr's trial for treason. On the question of whether an "overt act" was found against Burr, Mr. Beveridge joins his voice to the chorus of approval in the addresses that were compiled by Dillon on the occasion of the Marshall Centenary. It is indeed curious that so many eminent and excellent lawyers should have become involved in so deep befuddlement regarding a comparatively clear issue. Marshall's position may be justly stated thus: admitting *arguendo* that the common-law doctrine that in treason all are prin-

cipals was controlling, that the assemblage at Blennerbassett's Island, proved by several eye-witnesses, was an act of war, and that Burr had procured it, he yet ruled that Burr must be acquitted because his procurement of the assemblage was not testified to by two eye-witnesses. It is submitted that this is an utterly untenable position. The common-law doctrine has to-day been extended by statute to many other offenses, and its application is perfectly clear. It may be stated in the following words from a decision rendered only the other day by the Indiana Supreme Court: "One who connects himself with an existing conspiracy and joins in carrying out the common purpose and design will be deemed, in law, 'a party to every act which had before been done by others and a party to every act which may afterwards be done by any of the others in furtherance of such design.'" *Roberts v. State* (1919, Ind.) 124 N. E. 750, 752. Section 4 of Title I of the Espionage Act adopts the same principle. If, therefore, this principle applies to treason by levying war, and Marshall did not venture to say that it did not, the assemblage at Blennerbassett's Island was Burr's overt act, provided he was a party to the conspiracy which produced that assemblage.

But, Mr. Beveridge urges, the common-law doctrine leads to "constructive treasons." The answer is, that the escape from constructive treasons is not a rule of proof exonerating procurers of treason but a proper definition of treason itself. The treason with which Burr was charged is one specifically recognized by the Constitution, namely, the levying of war against the United States, and as we have seen, Marshall did not deny that the assemblage at Blennerbassett's Island constituted an act of war. The fact of the matter is that it is Marshall himself who is chargeable with introducing, in this very case, the doctrine of constructive treason, in his futile efforts to save himself from inconsistency. Thus in the earlier case of *Ex parte Bollmann and Swartout* (1807, U. S.) 4 Cranch, 75, 126, Marshall had said: "If war be actually levied, that is, if a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors." In his opinion in Burr's case he endeavors to explain away the natural force of these words, by treating the phrase "perform a part" as demanding an individual "levying of war" on the part of the performer. In other words, a part "however minute" may be an "act of war"! If this is not constructive treason, it would be difficult to imagine what is. Nor is Mr. Beveridge's second argument for Marshall's position more persuasive. The essence of it is embodied in the following statement from Marshall's opinion: "If in one case the presence of the individual makes the guilt of the [treasonable] assemblage *his* guilt, and in the other case the procurement by the individual makes the guilt of the [treasonable] assemblage *his* guilt, then presence and procurement are equally component parts of the overt act, and equally require two witnesses." Appendix, note (B.) (1808, U. S.) 4 Cranch, 470, 499. The answer obviously is that it is not presence—that, indeed, may be entirely innocent—which fastens the guilt of a treasonable assemblage upon an individual, but proof of the individual's participation in the conspiracy which produced the assemblage. That fact being shown by legally acceptable evidence, the assemblage, by the common-law doctrine, becomes the individual's own overt act, and the only overt act required by the Constitution, which knows absolutely nothing about "component parts" of overt acts.

The reader of this review may very well feel, however, that I am dwelling at disproportionate length on a somewhat incidental feature of Mr. Beveridge's splendid work. I admit the charge; my apology is my interest in the issue raised. Of the great merits of these volumes as a whole there can be no question. Through an always interesting, often dramatic narrative is skilfully winnowed

the results of the widest research, and the final product is the finally authoritative account of Marshall's great work, furnished with its proper historical setting. Mr. Beveridge has made two fames grow where one grew before, for his own name is henceforth inextricably linked with that of the great Chief Justice.

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The Actual Government of Connecticut. By Nancy M. Schoonmaker. New York, National Woman Suffrage Publishing Co. 1919. pp. 122.

This is a manual designed for the use of "High Schools, Colleges, Normal Schools, Clubs and other groups in which an interest in Government should be aroused," and especially the women, "whose enfranchisement may confidently be expected very soon." The title chosen does not seem happy. It leads one to expect a description of the practice rather than the theory. What one finds is material from the statutes and printed documents. This does not always show the practice. For example, in at least one large town, blanks for application to be made a voter are not used. The practice is much less formal. In no case did the reviewer notice a description of the actual as distinguished from the theoretical government.

It also seems unfortunate that the author has accepted unreservedly a theory of the historical relation of town and colony and state in Connecticut which has been repudiated by the latest and best historians, viz., Professors C. M. Andrews and Farrand of Yale and the writer of the article on Connecticut in the last edition of the *Encyclopedia Britannica*.

Apparently the author has not lived long in Connecticut. This has some advantages, for it gives a basis for comparison with conditions elsewhere. It has the disadvantage of unfamiliarity with the unwritten history of the state. For instance the statement (p. 39) that boards of finance, established in many of the towns, are proving adequate for the handling of such matters as formerly came under borough dispensation. Actually they are designed for no such purpose, but to constitute a check upon hasty or ill-advised action by towns in town meeting or by the legislative departments of cities, etc.

Lack of familiarity with law leads to odd mistakes, as, where it is stated (p. 57) that cases are appealed to the Supreme Court "on questions of legal procedure, that is, the court only determines whether or not a case has been conducted without error in the lower court" and where the description of the process of having one's personalty taxed where rates are low (p. 108) omits entirely the element of domicile.

On the whole, however, the work is well done, and should be of great assistance to anyone who will read it carefully.

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